

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF REVENUE

In the Matter of the Revocation of
The Sales and Use Permit of:

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

CENTRAL MINNESOTA SERVICES LLC,

Respondent.

The above-entitled matter came on before Administrative Law Judge Bruce H. Johnson ("ALJ") for a hearing on Thursday, June 30, 2005, at 9:30 a.m. The hearing was held pursuant to a Notice of and Order for Hearing, dated May 18, 2005.

Wayne L. Sather, Attorney, Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, appeared on behalf of the Minnesota Department of Revenue ("Department"). The Respondent, Central Minnesota Services, LLC, 2975 Highway 25, Watertown, MN 55388-9353, did not appear in person or by counsel.^[1] There were no additional submissions following the Respondent's default on June 30, 2005.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61^[2], the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Department of Revenue, 600 North Robert Street, St. Paul, MN 55146, (651) 296-3403, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90

days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

STATEMENT OF ISSUES

1. Did the Respondent fail to pay all sales and use tax due the State of Minnesota?

2. Did the Respondent fail to file monthly sales tax returns for the months August, September, October, November and December 2004?

3. Does the Respondent's failure to comply with provisions of Minnesota Statutes, Chapters 289A or 297A or rules promulgated thereunder authorize the Commissioner to revoke the Respondent's sales tax permit?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 18, 2005, a copy of the Notice of and Order for Hearing was delivered via first class mail and also via certified mail return receipt requested to Central Minnesota Services LLC at the following address: 2975 Highway 25, Watertown, MN 55388-9353, as appears from an Affidavit of Mailing to Last Known Address on file herein. That address was the most recent address that the Respondent had provided to the Department in connection with issuance of its Sales and Use Tax Permit.

2. The Respondent did not appear at hearing, did not obtain the ALJ's prior approval to be absent from the hearing, did not file a Notice of Appearance, and it did not request a continuance or any other relief.

3. The Notice of and Order for Hearing contained the following informational warning:

The Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

4. Because Respondent failed to appear, it is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have authority under Minn. Stat. §§ 289A.20, 297A.86 and 14.50 to consider the issues set out in the Notice and Order for Hearing and to take the action proposed.

2. Respondent received due, proper and timely notice of the hearing in this matter, and the Department has complied with all procedural requirements of law and rule. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

4. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the hearing.

5. The Department issued Sales and Use Tax Permit number 5280662 to the Respondent.

6. The Respondent has failed to pay sales and use taxes as required by Minn. Stat. §§ 289A.20 and 297A.77.

7. The Respondent has failed to file monthly sales tax returns for the months August, September, October, November and December 2004.

8. As of June 30, 2005, the total amount owed by the Respondent for sales tax, penalty, and interest is \$13,114.86.

9. The Department gave the Respondent the 30-day notice of intent to revoke, as required by Minn. Stat. § 297A.86, subd. 1.

10. As a result of the Respondent's failure to pay sales taxes, penalties, and interest and to file required sales tax returns, reasonable cause exists to revoke the Respondent's Sales and Use Tax Permit under Minn. Stat. § 297A.86.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge RECOMMENDS that the Commissioner of Revenue revoke Sales and Use Tax Permit number 5280662 issued to Central Minnesota Services LLC.

Dated this 20th day of July, 2005.

S/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Reported: tape recorded (1 tape). No transcript prepared.

^[1] See Findings of Fact No. 2.

^[2] Unless otherwise specified all references to Minnesota Statutes are to the 2004 edition.